

COMMISSIONER'S DIRECTIVE # 40

SEPTEMBER 2011

DISCLAIMER: Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: 2011 Legislation Affecting Indiana Adjusted Gross Income

REFERENCES: IC 6-3-1-3.5; IC 6-3-1-11

EFFECTIVE: Upon Publication

INTRODUCTION

During the 2011 Session of the Indiana General Assembly, a bill was enacted that affected the determination of Indiana adjusted gross income. House Enrolled Act (HEA) 1001-2011 amended IC 6-3-1-3.5 concerning the definition of Indiana adjusted gross income by providing modifications to federal adjusted gross income. HEA 1001 also amended IC 6-3-1-11 concerning the definition of the Internal Revenue Code (IRC). The Act is effective retroactively to taxable years beginning after Dec. 31, 2009.

REPORTING MODIFICATIONS ON INDIVIDUAL AND CORPORATE TAX RETURN

The modifications that were adopted retroactively for 2010 and 2011 in HEA 1001 may be reported on the 2011 individual or corporate income tax return. Taxpayers do not need to file an amended return for 2010 to report the required modifications, although filing an amended return is allowed.

HEA 1001-2011 MODIFICATIONS

HEA 1001-2011 provides the following modifications to adjusted gross income in IC 6-3-1-3.5.

Individual and Corporate Modifications:

- Add the amount deducted from federal gross income under Section 198 of the IRC for the expensing of environmental remediation costs.**
- Add the amount excluded from gross income under Section 408(d)(8) of the IRC for a charitable distribution from an individual retirement plan. The exclusion that would have been allowed cannot exceed \$100,000, and the donor must be older than 70 ½ years old.
- Add the amount deducted from gross income under Section 222 of the IRC for qualified tuition and related expenses. The maximum deduction that would have been allowed was \$4,000.
- Add the amount deducted from gross income under Section 62(2)(D) of the IRC for certain expenses of elementary and secondary school teachers. The maximum deduction that would have been allowed was \$250 for an elementary or secondary school teacher.
- Add the amount excluded from gross income under Section 127 of the IRC as annual employer-provided education expenses. The maximum exclusion for the employee was \$5,250.
- Add the amount deducted from gross income under Section 179E of the IRC for any qualified advanced mine safety equipment property. The deduction that was allowed was 50% of the cost of the equipment as an expense that is not chargeable to a capital account.**
- Add the monthly amount excluded from gross income under Section 132(f)(1)(A) and 132(f)(1)(B) that exceeds \$100 per month for a qualified transportation fringe.
- Add the amount deducted from gross income under Section 221 of the IRC concerning qualified student loan interest expenses that exceeds the amount the taxpayer could deduct under Section 221 of the IRC before it was amended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312).
- Add the amount necessary to make the adjusted gross income of any taxpayer that placed any qualified leasehold improvement property in service during the taxable year and that was classified as 15-year property under Section 168(e)(3)(E)(iv) of the IRC equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed into service.**
- Add the amount necessary to make the adjusted gross income of any taxpayer that placed a motorsports entertainment complex in service during the taxable year and that was classified as 7-year property under Section 168(e)(3)(C)(ii) of the IRC equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed into service.**
- Add the amount deducted under Section 195 of the IRC for start-up expenditures that exceeds the amount the taxpayer could deduct under Section 195 of the IRC before it was amended by the Small Business Jobs Act of 2010 (P.L.111-240). The start-up deduction before the change in the statute was \$5,000.**

- Add the amount necessary to make the adjusted gross income of any taxpayer for which tax was not imposed on the net recognized built-in gain of an S corporation under Section 1374(d)(7) of the IRC as amended by the Small Business Jobs Act of 2010 (P.L. 111-240) equal to the amount of adjusted gross income that would have been computed before Section 1374(d)(7) of the IRC as amended by the Small Business Jobs Act of 2010 (P.L. 111-240).

**These add backs are required for corporations, life insurance companies, insurance companies, trusts and estates, and financial institutions.

HEA 1001 DEFINITION OF THE INTERNAL REVENUE CODE

IC 6-3-1-11 has been amended to provide that the term "Internal Revenue Code" means the Internal Revenue Code of 1986 as amended and in effect on Jan. 1, 2011.

However, the following provisions of the IRC that were amended by the Tax Relief Act, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 are treated as though they were not amended:

- Section 1367(a)(2) of the IRC pertaining to an adjustment of basis of the stock of shareholders in an S corporation
- Section 871(k)(1)(C) and 871(k)(2)(C) of the IRC pertaining to the treatment of certain dividends of regulated investment companies
- Section 897(h)(4)(A)(ii) of the IRC pertaining to regulated investment companies qualified entity treatment
- Section 512(b)(13)(E)(iv) of the IRC pertaining to the modification of tax treatment of certain payments to controlling exempt organizations
- Section 613A(c)(6)(H)(ii) of the IRC pertaining to the limitations on percentage depletion in the case of oil and gas wells
- Section 451(i)(3) of the IRC pertaining to a special rule provided for the sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy for qualified electric utilities
- Section 954(c)(6) of the IRC pertaining to the look-through treatment of payments between related controlled foreign corporations under foreign personal holding company rules

HEA 1004 MODIFICATIONS

HEA 1004-2011 provides the following modifications to adjusted gross income in IC 6-3-1-3.5 effective Jan. 1, 2012.

- Add the amount excluded from federal gross income under Section 103 of the IRC for interest received on an obligation of a state other than Indiana, or a political subdivision of such a state, that is acquired by the taxpayer after Dec. 31, 2011.**

**This provision applies to corporations, life insurance companies, insurance companies, trusts and estates, and investment companies under the financial institutions tax.

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive style with a large, looping initial "J" and a stylized "Eckart".

John Eckart
Commissioner